

No. 16719

United States
Court of Appeals
for the Ninth Circuit

SEARS, ROEBUCK & COMPANY, a corporation,
Appellant,

vs.

SIDNEY SCHULEIN, Trustee in Bankruptcy of
the Estate of Charles Robert Baldwin and Betty
June Baldwin, bankrupts, Appellee.

Transcript of Record

Appeal from the United States District Court for the
Eastern District of Washington,
Northern Division

FILED

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FRANK H. SCHMID, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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Attorney for Appellant.

SIDNEY A. SCHULEIN,

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708 Spokane and Eastern Building,
Spokane, Washington,

Attorney for Appellee.

In the United States District Court, Eastern District of Washington, Northern Division

In Bankruptcy No. B-10851

In the Matter of

CHARLES ROBERT BALDWIN and BETTY
JUNE BALDWIN, husband and wife,
Bankrupt.

DEBTOR'S PETITION

To the Honorable Samuel L. Driver, Judge of the United States District Court for the Eastern District of Washington.

The Petition of Charles Robert Baldwin and Betty June Baldwin, husband and wife, individually and the community composed of them, residing at No. 6704 East 7th Avenue in Dishman, County of Spokane, State of Washington, by occupation a Floor Installer and employed by [or engaged in the business of] Brown Trailers, Inc., who states that he has not been known by any other name or trade name, for the past six years, other than,

Respectfully Represents:

1. Your petitioner has had his principal place of business [or has resided, or has had his domicile] at Dishman, Washington, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his

creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible to ascertain, the names and places of residence of his creditors, and such further statement concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore Your Petitioner Prays, That he may be adjudged by the court to be a bankrupt within the purview of said Act.

/s/ CHARLES ROBERT
BALDWIN,

/s/ BETTY JUNE BALDWIN.

/s/ JOSEPH L. McDOLE,
Attorney for Petitioner.

United States of America,
State of Washington,
County of Spokane—ss.

We, Charles Robert Baldwin and Betty June Baldwin, husband and wife, the petitioner named in

the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

/s/ CHARLES ROBERT
BALDWIN,

/s/ BETTY JUNE BALDWIN,
Petitioner.

Subscribed and sworn to before me this 20th day of February, 1957.

[Seal] /s/ JOSEPH L. McDOLE,
Notary Public in and for the State of Washington,
residing at Spokane. [1]*

Schedule B-5. Property Claimed as Exempt From the Operation of the Act of Congress Relating to Bankruptcy.

[N.B.—Each item of property must be stated, with its valuation, and, if any portion of it is real estate, its location, description and present use.]

Property claimed to be exempt by the laws of the United States, with reference to the statute creating the exemption: Household furniture—furnishings, personal clothing in schedule B-2 (D) and New Standard Encyclopedia. The above named property

* Page numbers appearing at bottom of page of Original Transcript of Record.

claimed to be exempt in accordance with the provisions of the Laws of the State of Washington, R.C.W. 6.16.010 et seq. Valuation: \$320.00.

Property claimed to be exempt by State laws, with reference to the statute creating the exemption: Lot Nineteen (19) Block Twenty (20) of Empire Addition to the County of Spokane, State of Washington. The above named property claimed to be exempt in accordance with the provisions of the Laws of the State of Washington. R.C.W. 6.12.010 et seq. Valuation: \$180.00.

Total, \$500.00.

/s/ CHARLES ROBERT
BALDWIN,

/s/ BETTY JUNE BALDWIN,
Petitioner. [2]

Summary of Debts and Assets

[From the statements of the debtor in
Schedules A and B.]

Schedule A—1-a Wages, None: None.

Schedule A—1-b (1) Taxes due United States,
None: None.

Schedule A—1-b (2) Taxes due States, None:
None.

Schedule A—1-b (3) Taxes due counties, districts
and municipalities, None: None.

Schedule A—1-c (1) Debts due any person, in-
cluding the United States, having priority by laws
of the United States, None: None.

Schedule A—1-c (2) Rent having priority, None:
None.

Schedule A—2 Secured claims: 1859.20.

Schedule A—3 Unsecured claims: 428.95.

Schedule A—4 Notes and bills which ought to be
paid by other parties thereto: None.

Schedule A—5 Accommodation paper: None.

Schedule A, Total: 2288.15.

Schedule B—1 Real Estate: 180.00.

Schedule B—2-a Cash on hand, None: None.

Schedule B—2-b Negotiable and non-negotiable
instruments and securities, no: None.

Schedule B—2-c Stock in trade, None: None.

Schedule B—2-d Household goods: 300.00.

Schedule B—2-e Books, prints, and pictures:
20.00.

Schedule B—2-f Horses, cows, and other ani-
mals, None: None.

Schedule B—2-g Automobiles and other vehicles,
None: None.

Schedule B—2-h Farming stock and implements,
None: None.

Schedule B—2-i Shipping and shares in vessels,
None: None.

Schedule B—2-j Machinery, fixtures, and tools,
None: None.

Schedule B—2-k Patents, copyrights, and trade-
marks, None: None.

Schedule B—2-l Other personal property, None:
None.

Schedule B—3-a Debts due on open accounts,
None: None.

Schedule B—3-b Policies of insurance, None: None.

Schedule B—3-c Unliquidated Claims, None: None.

Schedule B—3-d Deposits of money in banks and elsewhere, None: None.

Schedule B—4 Property in reversion, remainder, expectancy or trust, no: None.

Schedule B—5 Property claimed as exempt, \$500.00.

Schedule B—6 Books, deeds and papers: None.

Schedule B, Total: 500.00.

/s/ CHARLES ROBERT
BALDWIN,

/s/ BETTY JUNE BALDWIN,
Petitioner. [3]

[Endorsed]: Filed February 21, 1957.

[Title of District Court and Cause.]

ADJUDICATION OF BANKRUPTCY

At Spokane, Washington, in said District, on the 25th day of February, 1957.

The petition of Charles Robert Baldwin and Betty June Baldwin, husband and wife, filed on the 21st day of February, 1957, that Charles Robert Baldwin and Betty June Baldwin, husband and wife, be adjudged bankrupt under the Act of Con-

gress relating to bankruptcy, having been heard and duly considered; and there being no opposing interest;

It is adjudged that the said Charles Robert Baldwin and Betty June Baldwin, husband and wife, are bankrupt under the Act of Congress relating to bankruptcy.

/s/ MICHAEL J. KERLEY,
Referee in Bankruptcy. [4]

[Endorsed]: Filed February 25, 1957.

[Title of District Court and Cause.]

PETITION TO DECLARE CONTRACT OF
CONDITIONAL SALE TO BE ABSOLUTE
SALE

The undersigned trustee in bankruptcy of the estate of the above named bankrupt petitions and represents:

I.

The word "bankrupt," as used herein, denotes the individual bankrupt or all bankrupts named in the above proceeding, if there be more than one.

II.

That your petitioner is the duly appointed, qualified and acting trustee in bankruptcy of the estate of the above named bankrupt.

III.

By virtue of a voluntary petition in bankruptcy filed by him in the above Court on February 21, 1957, the bankrupt was adjudicated a voluntary bankrupt, and proceedings are now pending in said matter before the Honorable Michael J. Kerley, Referee in Bankruptcy.

IV.

During the month of December, 1954, the exact date being unknown to your petitioner, the bankrupts purchased a sewing machine and refrigerator from Sears Roebuck and Company under a contract of conditional sale, purporting to reserve title in the vendor until full payment of the purchase price.

V.

Notwithstanding the provisions and requirements of the statutes of the State of Washington that a signed memorandum of any contract of conditional sale, setting forth its terms and conditions, shall be filed in the office of the Auditor of the county wherein the purchaser resides at the time possession of said property was taken, within ten (10) days after such taking of possession by the purchaser, no such memorandum of sale was filed in such manner in the office of the Auditor of Spokane County, which was the county wherein the bankrupt resided at the time of the taking possession of such personal property. On account of the failure to file said contract, said sale became absolute as to the rights of

this trustee in bankruptcy. Subsequently the bankrupt became indebted to a large number of unsecured creditors whose claims remain unpaid.

VI.

Sears, Roebuck and Company retains indicia of ownership to said personal property and it is proper that it be required to surrender the same to your petitioner. [5]

VII.

Your petitioner desires to avoid all of the rights of the vendor aforesaid and of any successor in interest to the rights of said vendor, reserving, however, any and all rights which it may have as successor in interest to the vendor for the benefit of the bankrupt estate.

VIII.

The unpaid balance claimed to be owing on said contract of conditional sale is \$231.72. It is proper that the bankrupt be required to surrender possession of said property to your petitioner.

Wherefore, your petitioner prays that an order be entered requiring:

(1) That Sears Roebuck and Company appear and show cause, at a time and place to be fixed by the Court, why the purported conditional sales contract aforesaid should not be deemed to be an absolute sale as to the rights of this trustee in bankruptcy, and why it should not be required to sur-

render and transfer to your petitioner all evidence or indicia of ownership in and to said personal property;

(2) That the bankrupt appear and show cause why he should not be required forthwith to surrender to your petitioner the personal property involved in this proceeding.

/s/ SIDNEY SCHULEIN,
Trustee in Bankruptcy.

State of Washington,
County of Spokane—ss.

Sidney Schulein, being first duly sworn on oath deposes and says:

That he is the trustee in bankruptcy of the estate of the above named bankrupt and petitioner herein; that he has read the within and foregoing Petition, knows the contents thereof, and believes the same to be true.

/s/ SIDNEY SCHULEIN.

Subscribed and sworn to before me this 15th day of March, 1957.

[Seal] /s/ GRAYCE M. NEWMAN,
Notary Public in and for the State of Washington,
residing at Spokane. [6]

[Endorsed]: Filed March 15, 1957.

[Title of District Court and Cause.]

ORDER DECLARING CONDITIONAL SALE
CONTRACT OF SEARS ROEBUCK AND
COMPANY TO BE ABSOLUTE SALE

At Spokane, in said District, March 25, 1957.

This matter came on for hearing this day upon the petition of Sidney Schulein, trustee in bankruptcy, to declare a certain contract of conditional sale to be an absolute sale, to-wit, a contract wherein Sears Roebuck & Company is the vendor and the bankrupts are the vendees, the trustee appearing personally, and neither Sears Roebuck and Company nor the bankrupts appearing, and the Court having heard and considered the matter, and being sufficiently advised, finds:

That all matters and things set forth in the trustee's petition aforesaid are true.

From the foregoing findings, the Court makes the following

Conclusions of Law

1. That the conditional sale contract aforesaid is an absolute sale as to the rights of the trustee in bankruptcy on account of the failure of the vendor to file said contract in the office of the Spokane County Auditor within ten (10) days after the vendees took possession of the personal property described in said contract.

Wherefore, It Is Ordered, Adjudged and Decreed that he said Sears Roebuck and Company has no

right, title or claim or interest in or to any of the personal property described in said contract of conditional sale, and said sale was an absolute sale as to the rights of the trustee in bankruptcy. [7]

It Is Further Ordered that all of the rights of said Sears Roebuck and Company, the vendor under said contract, be and they are hereby preserved for the benefit and use of the bankrupt estate, and as a condition to retaining possession of said personal property the bankrupts shall pay to the trustee the unpaid balance owing thereon, to-wit, the sum of \$231.72, in the same manner as is prescribed in the original contract of conditional sale.

/s/ MICHAEL J. KERLEY,
Referee in Bankruptcy. [8]

[Endorsed]: Filed March 25, 1957.

[Title of District Court and Cause.]

PETITION TO RE-OPEN SHOW
CAUSE PROCEEDINGS

Comes Now Sears, Roebuck and Co., through Paine, Lowe, Coffin and Herman, its attorneys, and respectfully petitions the Referee to re-open the show cause proceedings and alleges as follows:

I.

Heretofore the Trustee petitioned the Referee for a show cause order, setting out in the petition dated

March 15, 1957, that the above named Bankrupts had purchased a sewing machine and refrigerator from Sears, Roebuck and Co. under conditional sale contracts, which contracts had not been recorded.

II.

That the Referee heretofore, on March 15, 1957, issued a show cause order directed to Sears, Roebuck and Co. based on the above petition, setting March 25, 1957, for hearing on such order.

III.

That on the hearing, Sears, Roebuck and Co. not appearing, petitioner is informed that the Referee entered its order directing that Sears, Roebuck and Co. had no further right, title or interest in or to the sewing machine and refrigerator.

IV.

That Sears, Roebuck and Co. did not receive a copy of the show cause order within five (5) days prior to the hearing and, in fact, not until March 29, 1957, at which time the order had already been entered. [9]

V.

That Sears, Roebuck and Co. believes it has good and sufficient legal grounds for claiming an interest in the personal property in the event such property is claimed as exempt by the Bankrupts and set aside as exempt property by the Trustee; that no order should be entered against Sears, Roebuck

and Co. until the Trustee has allowed the exempt property, as required by the Bankruptcy Act.

VI.

That the show cause hearing referred to should be re-opened in order to permit the rights and interests of the parties in the personal property in question to be determined, and the Trustee should be ordered to set aside exempt property as claimed by the Bankrupts and that no order should be entered against Sears, Roebuck and Co. until such has been accomplished.

VII.

That the re-opening of the show cause hearing will work no hardship on the Trustee, the Bankrupts or the creditors of the Bankrupts and that such re-opening would not be detrimental to the Bankrupts' estate or the creditors of the Bankrupts.

Wherefore, your petitioner prays that the Referee, after such notice as is deemed necessary to the Trustee and the Bankrupts, set aside the order entered March 25, 1957, and fix a new date for hearing the show cause order, as formerly set out.

PAINE, LOWE, COFFIN AND
HERMAN,

/s/ By JOHN HUNEKE,

Attorneys for Sears, Roebuck & Co.

Duly Verified. [11]

[Endorsed]: Filed April 19, 1957.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

At Spokane, in said District, April 23, 1957:

Upon reading the verified Petition To Re-Open Show Cause Proceedings in the estate of the above named Bankrupt, it is

Ordered, that said matter be re-opened and that Sears, Roebuck and Co. appear before the undersigned Referee in Bankruptcy, at his office in Room 338 Federal Building, in the City of Spokane, on the 13th day of May, 1957, at the hour of 10:00 o'clock A.M., on said day, then and there to show cause if any there be, why the prayer of the Trustee's Petition heretofore filed in the above entitled action, should not be granted.

It Is Further Ordered that the above named Bankrupt likewise appear at the time and place mentioned, then and there to show cause, if any he has, why he should not be required forthwith to surrender such personal property to the Trustee.

/s/ MICHAEL J. KERLEY,
Referee in Bankruptcy. [12]

[Endorsed]: Filed April 23, 1957.

[Title of District Court and Cause.]

ANSWER TO PETITION TO DECLARE CONTRACT OF CONDITIONAL SALE TO BE ABSOLUTE SALE

Comes Now Sears, Roebuck and Co. and in answer to the Petition of the Trustee to declare a contract of conditional sale to be an absolute sale, alleges as follows:

Sears, Roebuck and Co. admits the allegations of paragraphs I, II and III of said Petition.

Sears, Roebuck and Co. states that the following items were purchased from Sears, Roebuck and Co. on the dates shown and for the amounts set opposite thereto:

| | | |
|----------------|----------|----------|
| Sewing Machine | 12/18/54 | \$197.00 |
| Refrigerator | 7/25/55 | 211.95 |

that such purchases were made under conditional sale contracts, which contracts have not been recorded.

Sears, Roebuck and Co. denies the allegations set out in paragraphs V, VI and VII of the Petition above referred to and admits the balance due on the above purchases as set out in paragraph VIII in the Petition.

Sears, Roebuck and Co. states that the Trustee should first be required to designate the specific exempt property of the Bankrupts and the market value of each item thereof, as of the date of bankruptcy.

Sears, Roebuck and Co. states that the Trustee should be required to set aside the above items of personal property as exempt and that on such determination the Trustee then be determined to have no right, title or interest in or to such property.

Wherefore, Sears, Roebuck and Co. prays that the Trustee be [13] required to designate the specific exempt property, to determine its valuation as set out above and that as to such property the Trustee be declared to have no right, title or interest and that the Order To Show Cause be dismissed.

Dated this 16th day of May, 1957.

PAINE, LOWE, COFFIN AND
HERMAN,

/s/ By JOHN HUNEKE,

Attorneys for Sears, Roebuck and
Co. [14]

[Endorsed]: Filed May 16, 1957.

[Title of District Court and Cause.]

TRUSTEE'S REPORT OF EXEMPT
PROPERTY

To Michael J. Kerley, Referee in Bankruptcy:

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid as his own property, under the provisions of the Act of Congress relating to bankruptcy, as

his exemptions allowed by law and claimed by him in his schedules filed in the above entitled proceeding.

General Head: Property claimed to be exempt by the laws of the United States, with reference to the statute creating the exemption

General Head: Property claimed to be exempt by State laws, with reference to the statute creating the exemption: Particular Description: Lot 19 Block 20 Empire Addition Spokane County, Washington RCW 6.12.010 Equity Estimated Value: \$180.00.

Household furniture, furnishings, clothing and New Standard encyclopedia, Subject, however, to claim of lien of the Trustee arising out of preservation of chattel mortgage lien of Budget Finance Plan, and seller's interest in conditional sales contract of Sears-Roebuck RCW 6.16.010 et seq. 11 USCA § 24 (§6 Bankruptcy Act) Equity to the extent of any excess over described liens.

Dated this 16th day of May, 1957.

/s/ SIDNEY SCHULEIN,
Trustee. [15]

[Endorsed]: Filed May 16, 1957.

[Title of District Court and Cause.]

OBJECTIONS TO TRUSTEE'S REPORT
OF EXEMPT PROPERTY

Comes now Sears, Roebuck and Company, through Paine, Lowe, Coffin and Herman, its attorneys of record, and objects to the Trustee's report of exempt property and allowance of exemptions in the above bankruptcy estate, on the following facts and for the following reasons:

I .

The Trustee failed to take into his possession and set apart from property in the bankruptcy estate, any property as exempt to the bankrupts and the Trustee has, at all times, left possession of all property herein mentioned with the bankrupts.

II.

That included in household goods and furniture of the bankrupts are the following items purchased from Sears, Roebuck and Company on conditional sale contract, as set out in the Answer to the Show Cause Order on file herein:

Sewing Machine, and
Refrigerator

III.

That the Petition for Bankruptcy was filed February 21, 1957, and no Trustee's Report of Exempt Property was filed until May 16, 1957, which is con-

trary to the duties imposed by the Trustee by the Bankruptcy Act.

IV.

The Trustee has failed to fix a true valuation on the property set aside as exempt and on specific items therein and has, instead, [16] set out an indeterminate valuation based on an equity to the extent of any excess over described liens.

V.

The Trustee, by his actions, arbitrarily attempts to defeat the interest of the bankrupts in such property and the interest of Sears, Roebuck and Company by removing ordinarily exempt property from the claim of exemptions and in attempting to force the bankrupts to purchase such exemptions from their own estate.

VI.

The Trustee has made no effort to sell the property set aside to the bankrupts or that exempt from the report of exempt property, and has made no attempt to realize on such property for the benefit of the bankrupts' estate.

VII.

That as a result of the Trustee's acts, as set forth above, the rights of the bankrupts, the rights of Sears, Roebuck and Company and the rights of general creditors have all been affected detrimentally

and the Referee should not enter his approval of the report on exemptions, but rather the Trustee should be required to set out specific items of exempt property including the sewing machine and refrigerator referred to above and should also be required to set out the true valuation of each item.

Wherefore, Sears, Roebuck and Company prays that the approval of the Referee be withheld and that action be taken by the Referee requiring the Trustee to act as set forth above.

Dated this 27th day of May, 1957.

PAINE, LOWE, COFFIN AND
HERMAN,

/s/ By JOHN HUNEKE,

Attorneys for Sears, Roebuck
and Company. [17]

Duly Verified.

[Endorsed]: Filed May 27, 1957.

[Title of District Court and Cause.]

ORDER APPROVING TRUSTEE'S REPORT
OF EXEMPTIONS

At Spokane, Washington, in said district, on the 27th day of May, 1957.

It appearing to the Court that the trustee herein has more than ten (10) days prior to the entry of this order filed his report of exempted property in

accordance with law, and no objections having been taken thereto,

It Is Ordered that the said trustee's report of exempted property be and the same hereby is, in all things confirmed, and the bankrupt's claim to exemptions is hereby allowed accordingly.

It Is Further Ordered that the property specified in such report be and the same is hereby set apart to the bankrupt as exempt and ordered delivered to said bankrupt forthwith.

/s/ MICHAEL J. KERLEY,
Referee in Bankruptcy. [19]

[Endorsed]: Filed May 27, 1957.

[Title of District Court and Cause.]

PETITION FOR REVIEW

Comes now Sears, Roebuck and Company, through Paine, Lowe, Coffin and Herman, its attorneys, and petitions the District Judge in the above entitled Court to review the order of the Referee herein referred to and alleges:

I.

That heretofore, on March 25, 1957, Michael J. Kerley, as Referee, signed an order in the above entitled matter, a copy of which is attached hereto as Exhibit A and by this reference made a part of this petition; that subsequently, on May 16, 1957,

Michael J. Kerley, as Referee, announced his oral decision reopening the above matter and granting the Trustee's petition and affirming the order declaring conditional sale absolute as to Sears; that no formal order has been entered but that your petitioner files this petition for review in order to protect its rights on appeal within ten (10) days after the declaration of such decision.

II.

That the order referred to is in error in the following particulars:

(a) The Referee failed to require the Trustee to itemize property to be set aside as exempt, particularly including the sewing machine and refrigerator referred to in the answer of this petitioner to the show cause order.

(b) The Referee failed to require that the Trustee fix a market value of such items as of the date of bankruptcy and to fix such market value on each specific item, particularly the sewing machine [20] and refrigerator.

(c) In declaring that Sears, Roebuck and Company had no right, title, or claim, or interest in or to such personal property, including the sewing machine and refrigerator.

(d) In ordering the terms of the conditional sale contract with Sears, Roebuck and Company to be enforced against the bankrupts.

III.

That the Referee should have determined his order on the following principles:

(a) The claim of exemption by the bankrupts and the allowance of such exempt property by the Trustee must be of specific items in order to determine which household goods and furniture are to be set out as exempt and which items are to be retained by the Trustee in the bankrupts' estate.

(b) That a specific valuation of each item is necessary to determine if such allowances are within the State statutory exemptions.

(c) That as to certain items claimed as exempt, particularly a sewing machine and refrigerator, if set aside as exempt property, are no longer part of the bankrupts' estate or there is no right, title or interest of Sears, Roebuck and Company to turn over to the Trustee.

(d) The Trustee has no power to compel the bankrupts to buy their own exemptions or to pay out of subsequently acquired monies, any such money into the bankrupt estate.

Wherefore, petitioner prays that the record be certified to the above entitled Court; that this review be considered and the Court enter its order reversing the order of the Referee and sending the

matter back for further consideration and action in accordance with the terms of this petition.

PAINE, LOWE, COFFIN AND
HERMAN,

/s/ By JOHN HUNEKE,

Attorneys for Sears, Roebuck and
Company. [21]

Duly Verified.

[Note: Exhibit A "Order" is set out at pages 13-14.]

[Endorsed]: Filed May 27, 1957.

[Title of District Court and Cause.]

ORDER AFFIRMING ORDER DECLARING
CONDITIONAL SALE CONTRACT OF
SEARS ROEBUCK AND COMPANY AB-
SOLUTE SALE

At Spokane, Washington, in said District, on the 16th day of October, 1957.

The above entitled matter having come on for hearing May 16, 1957 upon the Petition of Sears Roebuck and Company to re-open show cause proceedings and particularly to set aside an Order of the Referee entered March 25, 1957 declaring the conditional sale contract of Sears Roebuck and Company an absolute sale, Sears Roebuck and Company having been represented by its attorney, John

Huneke, and the Trustee by himself, and the matter having been submitted without argument, it is

Ordered that for the purpose of argument the Order of March 25, 1957 be and the same is hereby re-opened, and

It Is Further Ordered that the said Order of March 25, 1957 be and the same is hereby affirmed.

/s/ MICHAEL J. KERLEY,
Referee in Bankruptcy. [25]

[Endorsed]: Filed October 16, 1957.

[Title of District Court and Cause.]

CERTIFICATE BY REFEREE TO JUDGE

At Spokane, Washington, in said District, on the 16th day of October, 1957.

To the Honorable Sam M. Driver, District Judge:

I, Michael J. Kerley, Referee in Bankruptcy of said Court, do hereby certify that in the course of this proceeding before me, upon hearing the Trustee's Petition to Declare Contract of Conditional Sale to Be Absolute Sale by Sears Roebuck and Company to the bankrupt, the following situation arose:

On December 18, 1954, Baldwin purchased from Sears Roebuck and Company a sewing machine for \$197.00, and on July 25, 1955, he purchased a refrigerator for \$211.95. Both items were bought under conditional sale contracts which were never re-

corded. On February 21, 1957 Baldwin filed a voluntary Petition in Bankruptcy and was adjudicated a bankrupt February 25, 1957. In his Schedules the bankrupt claimed as exempt personal property "Household furniture—furnishings," including the sewing machine and refrigerator.

March 15, 1957 the Trustee petitioned the Referee to have the Sears Roebuck conditional sale contracts declared absolute sales as to the Trustee because of lack of recordation. On March 25, 1957, the time set by notice on hearing of the matter, Sears Roebuck and Company did not appear; and an Order was entered Declaring the Conditional Sale Contract of Sears Roebuck and Company to be an absolute sale and preserving the rights of Sears Roebuck for the benefit of the estate. Subsequently Sears Roebuck and Company [26] petitioned to have this matter re-opened and it was re-opened and the question of invalidating said conditional sale contracts was reconsidered by the Referee on March 16, 1957 at which time the Referee orally announced that the order invalidating the contracts would stand.

On May 16, 1957 the Trustee filed his Report of Exempt Property. On May 17, 1957 Sears Roebuck and Company filed Objections to Trustee's Report of Exempt Property, and as of May 27, 1957 an Order was entered approving the Trustee's Report of Exemptions. Subsequently an Order was entered Affirming Order Declaring Conditional Sale Contract of Sears Roebuck and Company Absolute Sale.

The issue raised by Sears Roebuck and Company presented these questions:

1. Is the Trustee entitled to attack and take over for the benefit of the estate unrecorded conditional sale contracts where the bankrupt claims the covered personal property as exempt? I decided the Trustee was so entitled.

2. Was Sears Roebuck and Company in a position to have the Trustee ordered to itemize, and evaluate and set aside as exempt to the bankrupt the sewing machine and refrigerator so that these items would thus become the property of the bankrupt and not subject to an attack by the Trustee for lack of recordation of the conditional sale contracts? I decided Sears Roebuck and Company was in no such position.

There seemed to be no dispute between the parties as to the facts so I am not appending the usual summary of the evidence.

Thereafter and timely Sears Roebuck and Company filed a Petition for Review.

The undersigned Referee hereby certifies that the following enumerated instruments are the original instruments in each instance filed [27] in his office in this proceeding.

1. Schedule B-5.
2. Schedule B-2.
3. Order Declaring Conditional Sale Contract of Sears Roebuck and Company to be Absolute Sale.
4. Order to Show Cause (and Re-Opening).

5. Answer (of Sears Roebuck and Company) to Petition to Declare Contract of Conditional Sale to be Absolute Sale.

6. Trustee's Report of Exempt Property.

7. Objections to Trustee's Report of Exempt Property.

8. Order Approving Trustee's Report of Exemptions.

9. Petition for Review.

10. Order Affirming Order Declaring Conditional Sale Contract of Sears Roebuck and Company Absolute Sale.

/s/ MICHAEL J. KERLEY,
Referee in Bankruptcy. [28]

[Endorsed]: Filed October 16, 1957.

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES FOR SEARS, ROEBUCK AND COMPANY

Sears, Roebuck and Company presents the following Memorandum of Points and Authorities to sustain its position that when the bankrupt claims as exempt certain household goods and furniture, including in this case a sewing machine and refrigerator purchased on conditional sales contract, not recorded, that the Trustee should then allow exemptions in accordance with the Washington State Statutes and include such items if within the statu-

tory allowance of value and in order to determine the fact of value, the Trustee should itemize and evaluate such items of exempt property.

It is the further position of Sears, Roebuck and Company that the Trustee cannot ignore the question of value as of the date of bankruptcy and cannot arbitrarily attempt to enforce the balance of any purchase price of such items against the bankrupt.

The basic question with which we are here concerned is arising with minor variations in many bankruptcies in this State and is based on similar factual situations in which there are items of household furniture and fixtures purchased under conditional sales contracts, which contracts are not recorded, and which items are subsequently claimed as exempt by the bankrupt.

It is conceded that under Washington State Statutes, the failure to record a conditional sale contract results in an absolute title in the purchaser as far as subsequent creditors are concerned.

It is also conceded that as such title is absolute unless the property covered thereby is claimed as exempt, title vests in the Trustee and there is nothing else to which the Trustee can succeed. [29]

The question arises when such property is includable as exempt property then the Trustee must place a value on it and itemize and allow exemptions in accordance with bankruptcy law. The dispute then arises between Trustees who attempt to recover the balance of the purchase price of such items from the bankrupt and Sears which insist

that if the property is exemptable under State law, the Trustee can have no claim upon it, nor recover the purchase price against the bankrupt.

These points and authorities are set out only in outline form and not as a complete brief. It must be recognized that Trustees have no title to exempt property and no right to administer exempt property in the bankrupt's estate:

In re Urban, 136 F. (2d) 296.

Van Slyke v. Bumgarner, 177 Wash. 336, 31 P. (2d) 1014.

In re Durham, 104 Fed. 231.

Baumbaugh v. Los Angeles Morris Plan Co., 30 F. (2d) 816.

In order to determine whether property included in the class of statutory exemptions is exemptable, a market value as of the date of bankruptcy must be placed upon each item (this is true even if the Trustee's theory of setting aside an "equity" is followed):

R.C.W. 6.16.020(3).

Sears v. McAllister, 184 F. (2d) 487.

William A. Finley Bankrupt, No. 42362, Western District of Washington, Northern Division.

Kilgo v. United Distributors, 223 F. (2d) 167.

If property is found to be within the statutory exemption then the Trustee has no rights in such property and title cannot be turned over to the Trustee and it is the duty of the Trustee to set such exempt property over to the bankrupt:

George Nin Woo Bankruptcy, No. 37956, Western District of Washington, Northern Division.

Sherman Clifford Sprinkle, Jr. Bankrupt, No. 39291, Western District of Washington, Northern Division. [30]

In re Lippow, 92 F. (2d) 619.

Kilgo v. United Distributors, (supra).

In such a situation it makes no difference that the property involved may have been mortgaged or purchased under a conditional sale contract:

In re Lippow (supra).

Personal Finance Company of Chicago v. Silver, 64 N.E. (2d) 398.

A Trustee in bankruptcy is not a bona fide purchaser but is in the position of an ideal creditor, an attachment creditor and an unsatisfied judgment creditor armed with process. The purchase under a conditional sale contract is not in the nature of a transfer and there is no creditor of any sort to complain:

Anderson Buick Company v. Cook, 7 Wn. (2d) 632, 110 P. (2d) 857.

Reconstruction Finance Corp. v. Hambright, 16 Wn. (2d) 81, 133 P. (2d) 278.

Baumbaugh v. Los Angeles Morris Plan Co. (supra).

A Trustee in bankruptcy cannot enforce the balance of the purchase price of a conditional sale contract against the bankrupt and cannot force the bankrupt to pay additional money into the estate in order to purchase his exemptions:

11 U.S.C.A. 110 (Note 781 and citations thereunder).

It is believed that the errors referred to in the Petition for Review and the legal principles relied on have been covered in the above statement of points and authorities. It is submitted that the Order of the Referee should be reversed and the matter sent back for further action requiring the Trustee to evaluate and itemize the various items of personal property claimed as exempt by the bankrupt and that such items should be set aside to the bankrupt as exempt.

Respectfully submitted,

PAINE, LOWE, COFFIN AND
HERMAN,
By JOHN HUNEKE,
Attorneys for Sears, Roebuck and
Company. [31]

[Endorsed]: Filed October 29, 1957.

[Note: Letter of Judge Driver is set out in the Memorandum of Decision and Order at pages 56-62.]

[Title of District Court and Cause.]

ORDER ON PETITION FOR REVIEW

This matter came on regularly for hearing before the Court on November 8, 1957, upon petition of Sears, Roebuck and Company for a review of that certain order of the referee, entered October 16, 1957, wherein the referee affirmed an order

entered March 25, 1957, declaring the sales by Sears, Roebuck and Company under conditional sales contracts, as absolute sales, and preserving the rights of said company under the contracts for the use and benefit of the bankrupt estate, and ordering payment of the balance of the purchase price to the trustee. The Court has heard arguments of counsel and read the petition for review, referee's certificate on review, and memoranda of petitioner and trustee, and is fully advised in the premises.

It Is Now, Therefore, Ordered that this matter be remanded to the referee, who is hereby instructed to make or cause to be made a list of the items of property and the estimated values thereof claimed as exempt by the bankrupts, to set off such exemptions, or cause them to be set off, if such has not heretofore properly been done, and specifically to find whether the property covered by the above referred to conditional sales contracts constitute a part thereof; that the referee give notice of his proposed findings and conclusions as aforesaid to the attorneys for the trustee, the bankrupt, and Sears, Roebuck and Company, giving them an opportunity to be heard and object thereto. After the determination of the exempt property, the referee shall reconsider the order hereinabove mentioned involved in this review proceeding, making such changes therein as he [36] deems appropriate as a result of the findings made and conclusions reached pertaining to the exempt property, and that such order as the referee may then make, or cause to be

made, shall be subject to review in the same manner as any other order entered by the referee.

Done this 28th day of February, 1958.

/s/ SAM M. DRIVER,
United States District Judge.

Notice of Mailing Attached. [37]

[Endorsed]: Filed February 28, 1958.

[Title of District Court and Cause.]

ORDER APPROVING TRUSTEE'S AMENDED
REPORT OF EXEMPTIONS

At Spokane, Washington, in said district, on the 12th day of May, 1958.

It appearing to the Court that the trustee herein has more than ten (10) days prior to the entry of this order filed his report of exempted property in accordance with law, and no objections having been taken thereto,

It Is Ordered that the said trustee's report of exempted property be and the same hereby is, in all things confirmed, and the bankrupt's claim to exemptions is hereby allowed accordingly.

It Is Further Ordered that the property specified in such report be and the same is hereby set apart to the bankrupt as exempt and ordered delivered to said bankrupt forthwith.

/s/ MICHAEL J. KERLEY,
Referee in Bankruptcy. [38]

[Endorsed]: Filed May 12, 1958.

[Title of District Court and Cause.]

CERTIFICATE OF REFEREE TO JUDGE

At Spokane, Washington, in said District, on the 30th day of March, 1959.

To the Honorable William J. Lindberg, District Judge:

I, Michael J. Kerley, Referee in Bankruptcy for this District, do hereby certify that in the course of proceedings the following questions were presented for decision:

(1) Where the Trustee in bankruptcy has set aside to the bankrupt as exempt the bankrupt's interest or equity in personal property to the extent of the excess in value of said interest or equity over the unpaid balances payable under unrecorded conditional sale contracts, are these two transactions absolute sales as to the Trustee for lack of recordation under R.C.W. 6.16.020 and .080?

I held them to be absolute sales as to the Trustee.

(2) As to the foregoing facts, is the Trustee entitled to take over and preserve for the benefit of the bankrupt estate the vendor's lien interests in the unrecorded conditional sale contracts?

I held the Trustee to be so entitled under Sec. 6 of the Bankruptcy Act (11 U.S.C. #24) and Sec. 70 of the Bankruptcy Act (11 U.S.C. #110).

These holdings came about as the result of an "Order on Petition for Review" entered herein January 28, 1958, by Hon. Sam M. Driver, in which Order the Trustee was directed to again set off the

bankrupt's exemptions, and that the Referee give notice of his proposed findings, etc., and that the Referee should reconsider the matter, etc. [39]

After the Trustee filed his Amended Report of Exempt Property, and upon due notice to counsel for Sears Roebuck, vendor under the conditional sale contracts in question, I entered Supplemental Findings of Fact and Conclusions of Law and Supplemental Order Declaring Conditional Sales Contracts of Sears Roebuck & Co. to Be Absolute Sales and Preserving Lien or Interest for Benefit of Bankrupt Estate. Subsequently and timely, Sears Roebuck filed herein its Petition for Review.

The undersigned Referee hereby certifies that the attached enumerated instruments are the original instruments in each instance filed in his office in this proceeding.

1. Order (of Judge) on Petition for Review.
2. Trustee's Amended Report of Exempt Property.
3. Supplemental Order to Show Cause Why Conditional Sales Contracts Should Not Be Declared Absolute Sales and the Lien Thereof Preserved for the Benefit of the Bankrupt Estate.
4. Supplemental Findings of Fact and Conclusions of Law.
5. Supplemental Order Declaring Conditional Sales Contracts of Sears Roebuck & Co. to Be Absolute Sales and Preserving Lien or Interest for Benefit of Bankrupt Estate.
6. Petition for Review.

Also transmitted herewith but not as part of the record are copies of letter from Hon. Sam M. Driver dated December 10, 1957, in the instant case pertaining to the first Petition for Review filed and heard herein, and the Memorandum of Points and Authorities for Sears, Roebuck and Company filed at the hearing of the first Petition for Review, for such use as your Honor may see fit to make.

/s/ MICHAEL J. KERLEY,
Referee in Bankruptcy. [40]

[Note: Order on Petition for Review appearing here is the same as set out at pages 35-37.]

[Title of District Court and Cause.]

TRUSTEE'S AMENDED REPORT OF
EXEMPT PROPERTY

To Michael J. Kerley, Referee in Bankruptcy:

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid as his own property, under the provisions of the Act of Congress relating to bankruptcy, as his exemptions allowed by law and claimed by him in his schedules filed in the above entitled proceeding.

| General Head—Particular Description | Estimated Value |
|---|-----------------|
| the laws of the United States, with reference to the statute creating the exemption | |

Property claimed to be exempt by State laws, with reference to the statute creating the exemption:

Household furnishings as follows:

| | | |
|--|---------|----------------|
| Daveno | \$20.00 | |
| Overstuffed chair..... | 10.00 | |
| End tables | 5.00 | |
| Lamp | 2.50 | |
| Arvin radio..... | 5.00 | |
| Chrome kitchen set, with 4 chairs | 25.00 | |
| 2 baby beds..... | 20.00 | |
| 1 wardrobe chest | 10.00 | |
| 1 bed and 2 dressers..... | 50.00 | |
| 1 Hotpoint range..... | 35.00 | |
| 1 Maytag washer..... | 20.00 | |
| New Standard Encyclopedia | 10.00 | |
| Wearing apparel and per- sonal effects..... | 10.00 | |
| Coldspot refrigerator— equity | 50.00* | Value \$200.00 |
| Kenmore sewing machine— equity | 35.00 | “ 116.72 |

* These two items, at the time the petition was filed, were being purchased from Sears Roebuck & Co. under conditional sales contracts, the lien of which the trustee reserves the right to preserve for the benefit of the bankrupt estate.

\$320.00

Dated this 30th day of April, 1958.

/s/ SIDNEY SCHULEIN,
Trustee. [43]

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed May 1, 1958.

[Title of District Court and Cause.]

SUPPLEMENTAL ORDER TO SHOW CAUSE
WHY CONDITIONAL SALES CONTRACTS
SHOULD NOT BE DECLARED ABSOLUTE
SALES AND THE LIEN THEREOF PRE-
SERVED FOR THE BENEFIT OF THE
BANKRUPT ESTATE

At Spokane, in said District, May 1, 1958.

This matter coming on for hearing this day, pursuant to the order of the Honorable Sam M. Driver, United States District Judge, entered February 28, 1958, wherein the above entitled Court was directed to do certain things, and it appearing that exemptions have been duly set aside to the bankrupts, and that the trustee has submitted for signature of the Referee proposed Findings of Fact and Conclusions of Law and Order, and it further appearing that Sears Roebuck & Co. should be afforded an opportunity to be heard and object to the entry of said Findings, Conclusions and Decree; it is

Ordered that Sears Roebuck & Co. appear before the undersigned Referee in Bankruptcy, at his office in Room 338 Federal Building, in the City of Spokane, on the 12th day of May, 1958, at the hour of 2:15 o'clock p.m. of said day, then and

there to show cause, if any it has, why the proposed Supplemental Findings of Fact and Conclusions of Law and Supplemental Order, copies of which are hereto attached and by reference made a part hereof, should not be signed by the Court, why the purported conditional sales contracts described in said Findings should not be declared to be absolute sales as to the rights of the trustee in bankruptcy, and why Sears Roebuck & Co. should not be required to surrender and transfer to the trustee all indicia of ownership of the personal property described therein, and why the interests of Sears Roebuck & Co. should not be preserved for the benefit of the bankrupt estate. [44]

It Is Further Ordered that a certified copy of this Order to Show Cause, together with copies of said proposed Supplemental Findings of Fact and Conclusions of Law and Supplemental Order, be served upon said Sears Roebuck & Co. by mailing copies thereof to it at the address set forth below:

Sears Roebuck & Co.

c/o Paine, Lowe, Coffin & Herman

Attention: John Huneke

Attorneys at Law

Spokane & Eastern Building

Spokane 1, Washington

/s/ MICHAEL J. KERLEY,

Referee in Bankruptcy. [45]

Acknowledgment of Service Attached.

[Endorsed]: Filed May 1, 1958.

[Title of District Court and Cause.]

SUPPLEMENTAL FINDINGS OF FACT
AND CONCLUSIONS OF LAW

At Spokane, in said District, May 13, 1958.

This matter came on for hearing this day, pursuant to the order of the Honorable Sam M. Driver, United States District Judge, dated February 28, 1958, the trustee, Sidney Schulein, appearing personally, and Sears Roebuck & Co. appearing by its attorneys, Paine, Lowe, Coffin & Herman, John Huneke of counsel, and the Court having heard arguments of counsel, and having heretofore approved exemptions of the bankrupts in accordance with the trustee's report of exemptions, and notice having been given to the parties hereto, giving them an opportunity to be heard and object to these proceedings, and the Court having reconsidered its orders entered March 25, 1957, and October 16, 1957, the Court does hereby make the following

Findings of Fact

I.

Sidney Schulein is the duly appointed, qualified and acting trustee in bankruptcy of the estate of the above named bankrupts.

II.

By virtue of a voluntary petition in bankruptcy filed in the above entitled Court on February 21, 1957, the bankrupts were adjudicated voluntary

bankrupts, and proceedings are now pending in said matter before the Honorable Michael J. Kerley, Referee in Bankruptcy. [46]

III.

The bankrupts, as vendees, purchased from Sears Roebuck & Co., as vendor, a Kenmore sewing machine for the sum of \$197.00 and a Coldspot refrigerator for the sum of \$211.95, under contracts of conditional sale dated December 18, 1954 and July 25, 1955, respectively, which contracts purported to reserve title in the said vendor until full payment of the purchase price; that both such items of personal property were claimed exempt by the bankrupts in their schedules filed herein, at a time when the combined balance due thereon was \$231.72 and at which time the bankrupts had an equity of \$85.00 therein; that on the date of the filing of the petition, February 21, 1957, said sewing machine and refrigerator had a fair market value of \$116.72 and \$200, respectively; that said items of personal property, pursuant to the trustee's report on exemptions, have been set aside to the bankrupts, to the extent of the excess in value thereof, as found by the trustee, over the unpaid balance due thereon, reserving unto said trustee the right to preserve the interest of the vendor under said conditional sales contracts for the benefit of the bankrupt estate.

IV.

Notwithstanding the provisions and requirements of the statutes of the State of Washington that a

signed memorandum of any contract of conditional sale, setting forth its terms and conditions, shall be filed in the office of the Auditor of the County wherein the purchaser resides at the time possession of said property was taken, within ten (10) days after such taking of possession by the purchaser, no such memorandum of sale was ever filed in such manner in the office of the Spokane County Auditor, which was the county wherein the bankrupts resided at the time of the taking of possession of such personal property. On account of the failure to file said contract, said sale became absolute as to the rights of the trustee in bankruptcy. Subsequently the bankrupt became indebted to a large number of unsecured creditors, whose claims remain unpaid. [47]

V.

Sears Roebuck and Company retains indicia of ownership to said personal property and it is proper that it be required to surrender the same to the trustee.

VI.

The Trustee desires to avoid all of the rights of Sears Roebuck & Co. in and to said property and to preserve the rights and interests of said vendor for the benefit of the bankrupt estate.

From the foregoing Findings of Fact, the Court makes the following:

Conclusions of Law

1. That said contracts of conditional sale should be declared absolute as to the rights of the trustee in bankruptcy, representing creditors subsequent in time to the execution of said contracts and the delivery of the property thereunder to the bankrupts, and that any lien or interest of the vendor, Sears Roebuck & Co., should be preserved for the benefit of the bankrupt estate.

/s/ MICHAEL J. KERLEY,
Referee in Bankruptcy. [48]

Acknowledgment of Service Attached.

[Endorsed]: Filed May 13, 1958.

[Title of District Court and Cause.]

SUPPLEMENTAL ORDER DECLARING CON-
DITIONAL SALES CONTRACTS OF
SEARS ROEBUCK & CO. TO BE ABSO-
LUTE SALES AND PRESERVING LIEN
OR INTEREST FOR BENEFIT OF BANK-
RUPT ESTATE

At Spokane, in said District, May 13, 1958.

This matter came on for hearing this day pursuant to the order of the Honorable Sam M. Driver, United States District Judge, dated February 28, 1958, the trustee, Sidney Schulein, appearing personally, and Sears Roebuck & Co. appearing by its

attorneys, Paine, Lowe, Coffin & Herman, John Huneke of counsel, and the Court having heretofore entered its Supplemental Findings of Fact and Conclusions of Law herein; it is

Ordered, Adjudged and Decreed that Sears Roebuck & Co. has no right, title, claim or interest in or to any of the personal property described in said conditional sales contracts, and said sales are absolute as to the rights of the trustee in bankruptcy.

It Is Further Ordered, Adjudged and Decreed that all of the rights of said Sears Roebuck & Co. be and they are hereby preserved for the benefit of the bankrupt estate, and as a condition to retaining possession of said Kenmore sewing machine and Coldspot refrigerator the bankrupts shall pay to the trustee the unpaid balance owing thereon, to-wit, the sum of \$231.72, in the same manner as is prescribed in the original contract of conditional sale.

/s/ MICHAEL J. KERLEY,
Referee in Bankruptcy. [49]

Acknowledgment of Service Attached.

[Endorsed]: Filed May 23, 1958.

[Title of District Court and Cause.]

PETITION FOR REVIEW

To Michael J. Kerley, Referee in Bankruptcy:

Comes now Sears, Roebuck & Company through Paine, Lowe, Coffin and Herman its attorneys, and petitions the above entitled referee as follows:

I.

That Petitioner is aggrieved by the order hereinafter referred to affecting the rights, duties and obligations of the Petitioner in connection with the above bankruptcy.

II.

That heretofore on May 13, 1958, the above named Referee signed supplemental Findings of Fact and Conclusions of Law and supplemental Order Declaring Conditional Sales Contracts of Sears, Roebuck & Company to be absolute sales and preserving liens or interest for benefit of bankrupt estate, copies of which are attached hereto as exhibits A and B and by this reference made a part of this Petition.

III.

That the Findings of Fact signed by the Referee are in error in the following particulars:

a) The following facts as stated in Paragraph 3 of the Findings, "at which time the bankrupts had an equity of \$85.00 therein", and, "have been set aside to the bankrupt to the extent of the excess in value thereof as found by the trustee over the unpaid balance due thereon reserving unto said trustee the right to preserve the interest of the vendor under said conditional sales contract [50] for the benefit of the bankrupt estate".

b) The facts set forth in Finding No. 4 as follows, "said sale became absolute as to the rights of the trustee in bankruptcy".

c) The Findings set forth in Paragraph 5 as follows, "it is proper that it be required to surrender the same to the trustee".

d) The Conclusion of Law set forth in full as follows,

"1. That said contracts of conditional sale should be declared absolute as to the rights of the trustee in bankruptcy, representing creditors subsequent in time to the execution of said contracts and the delivery of the property thereunder to the bankrupts, and that any lien or interest of the vendor, Sears Roebuck & Co., should be preserved for the benefit of the bankrupt estate."

IV.

The supplemental order referred to is in error in the following particulars:

a) In ordering, adjudging and decreeing that Sears, Roebuck & Company has no right, title, claim or interest in or to any of the personal property described in said conditional sales contracts, and said sales are absolute as to the rights of the trustees in bankruptcy.

b) In further ordering, adjudging and decreeing that all of the rights of said Sears, Roebuck & Company be and they are hereby preserved for the benefit of the bankrupt estate, and as a condition to retaining possession of said Kenmore sewing machine and Coldspot refrigerator the bankrupts

shall pay to the trustee the unpaid balance owing thereon, to-wit, the sum of \$231.72, in the same manner as is prescribed in the original contract of conditional sale.

V.

The Referee should have determined his Order on the following legal principles:

a) That as to property set aside as exempt, the Trustee has [51] no interest in any vendor's interest of conditional sales contracts.

b) That the trustee can acquire no lien against personal property set aside as exempt.

c) That the trustee has no rights unless there is an actual creditor who has the power to avoid the transaction.

d) That where personal property set aside as exempt has a market valuation less than the exemptions allowed by state law, the trustee has no further right or claim against such property.

d) That as to property set aside as exempt, the trustee has no right to preserve the interest of a conditional sales vendor under conditional sales contracts for the benefit of the bankrupt estate.

Wherefore, Petitioner prays that the record be certified to the above entitled Court; that this review be considered and the Court enter its order reversing the order of the Referee and sending the

matter back for further consideration and action in accordance with the terms of this Petition.

PAINE, LOWE, COFFIN AND
HERMAN,

/s/ By JOHN HUNEKE,

Attorneys for Sears, Roebuck
& Company. [52]

Acknowledgment of Service Attached.

[Endorsed]: Filed May 23, 1958.

[Endorsed]: Certificate of Referee to Judge.
Filed March 30, 1959.

United States District Court, Eastern District
of Washington, Northern Division

In Bankruptcy No. B-10851

In the Matter of

CHARLES ROBERT BALDWIN and BETTY
JUNE BALDWIN, his wife,
Bankrupts.

MEMORANDUM DECISION AND ORDER

This matter is before the court for review for the second time. Because of the conclusion I have reached as to the disposition I should make of the matter I have directed the clerk of the court to secure from the referee the remaining part of the

record of proceedings in the case which contains some of the documents before the court on the first review and I hereby direct the clerk of the court to file such proceedings as a part of the record in this proceedings, to be returned to the referee upon the conclusion of this review and any appeal that may be taken herein.

A brief review of the material facts in the case and a history of the proceedings as may be gleaned from the whole record will prove helpful is not essential.

Charles Robert Baldwin and his wife, Betty June Baldwin, as vendees, purchased from Sears, Roebuck & Co., as vendor, a sewing machine for the sum of \$197 and a refrigerator for the sum of \$211.95 under contracts of conditional sale. The contracts were not filed for record as required by the law of the State of Washington, R.C.W. 63.12.010.

Thereafter the Baldwins filed a voluntary petition in bankruptcy and were adjudicated bankrupts on February 21, 1957. In Schedule B-5 the bankrupts claimed as exempt personal property "Household furniture—furnishings, personal clothing in schedule B-2 (D) and New Standard Encyclopedia. [53] The above named property claimed to be exempt in accordance with the provisions of the Laws of the State of Washington, R.C.W. 6.16.010 et seq. \$320.00".

The trustee's report of exempt property dated May 16, 1957 (approved by the Referee May 27,

1957) described the personal property allowed by law and claimed by bankrupts as follows:

“Household furniture, furnishings, clothing and New Standard encyclopedia, Subject, however, to claim of lien of the Trustee arising out of preservation of chattel mortgage lien of Budget Finance Plan, and seller’s interest in conditional sales contract of Sears-Roebuck RCW 6.16.010 et seq. 11 USCA § 24 (§6 Bankruptcy Act)”

In placing an estimated value on the property the trustee did not fix a dollar valuation thereon but apparently allowed what is described “equity” and under estimated value stated “to the extent of any excess over described liens.”

On March 25, 1957, the referee upon petition of the trustee entered an order providing that Sears, Roebuck and Company had no right, title or claim in the personal property (refrigerator and sewing machine) described in the conditional sales contract and that the sale was an absolute sale as to the rights of the trustee in bankruptcy, and providing further that all the rights of Sears, Roebuck & Co. were preserved for the benefit and use of the bankrupt estate and as a condition of retaining possession of said personal property the bankrupts pay to the trustee the unpaid balance owing under the provisions of the conditional sales contract, to-wit: the sum of \$231.72, in the same manner as provided in the original contract of conditional sale.

On May 27, 1957 Sears, Roebuck & Co. filed objections to the trustee’s report of exempt property

and also a petition to review the referee's order above referred [54] to, wherein the company alleged:

"That the order referred to is in error in the following particulars:

"(a) The Referee failed to require the Trustee to itemize property to be set aside as exempt, particularly including the sewing machine and refrigerator referred to in the answer of this petitioner to the show cause order.

"(b) The Referee failed to require that the trustee fix a market value of such items as of the date of bankruptcy and to fix such market value on each specific item, particularly the sewing machine and refrigerator.

"(c) In declaring that Sears, Roebuck and Company had no right, title, or claim, or interest in or to such personal property, including the sewing machine and refrigerator.

"(d) In ordering the terms of the conditional sale contract with Sears, Roebuck and Company to be enforced against the bankrupts."

The matter, along with four other cases wherein the referee made the same ruling under similar facts and circumstances, came on for review before the late Honorable Sam M. Driver, judge of this court.¹ Judge Driver, concluding that the five cases presented common questions, ruled upon the basic

¹ It may be assumed from Judge Driver's letter-opinion that the facts and circumstances and rulings of the referee were substantially the same in all five cases.

issues presented in all the cases in a letter-opinion addressed to counsel in each of the said cases. The letter-opinion is as follows:

“December Tenth

Yakima

1957

- “Paine, Lowe, Coffin & Herman, 602 Spokane & Eastern Building, Spokane, Washington Attorneys for Sears, Roebuck & Co., and National Finance Corporation (B-2759, B-2961, B-10851, and B-10779)
- “Velikanje, Velikanje & Moore, Miller Building, Yakima, Washington, Attorneys for Petitioners (B-2759) [55]
- “Mr. Lloyd K. Miller, E. 7202-F Sprague Avenue, Spokane, Washington, Attorney for Petitioners (B-10991)
- “Mr. William B. Iunker, 904 Paulsen Building, Spokane, Washington, Attorney for Beneficial Finance Corp. (B-10991)
- “Mr. Joseph L. McDole, 418 Paulsen Building, Spokane, Washington, Attorney for Petitioners (B-10851)
- “Mr. Charles T. Morbeck, 313 W. Kennewick Avenue, Kennewick, Washington, Attorney for Petitioner (B-2961)
- “Mr. Edward V. Lockhart, Jr., Trustee (B-2759), Larson Building, Yakima, Washington
- “Mr. Sidney Schulein, Trustee (B-10779, B-10851, B-10991), 708 Spokane & Eastern Bldg., Spokane, Washington

“Mr. Hugh B. Horton, Trustee (B-2961), Box 432,
Kennewick, Washington

“Mr. Thomas Malott, 708 Spokane & Eastern Bldg.,
Spokane, Washington, Attorney for Trustee
(B-2961)

“Dean & Williams, 219 Paulsen Building, Spo-
kane, Washington, Attorneys for Bankrupt
(B-10779)

“Mr. Arthur W. Kirschenmann, Larson Building,
Yakima, Washington, Attorney for Trustee
(B-2759)

“Gentlemen:

“Re:

In re Simmons, et ux, Bankrupts—B-2750 (So.
Div.)

In re Brothwell, et ux., Bankrupts—B-2961 (So.
Div.)

In re Carnegie, Bankrupt—B-10779 (No. Div.)

In re Baldwin, Bankrupt—B-10851 (No. Div.)

In re Bogle, et ux., Bankrupts—B-10991 (No.
Div.)

“Although, as pointed out in the oral argument,
there are procedural differences in the five above
listed bankruptcy cases, they present common ques-
tions which I shall endeavor to pass upon in this
letter covering all of them. [56]

“I have decided not to write a memorandum
opinion for publication in Federal Supplement, as
I think that in the public interest these cases—or
at least one, or more, that are typical—should be
appealed so that we may have an authoritative de-
cision by the Court of Appeals for the Ninth Cir-

cuit. Since five of them have come up in the relatively small Eastern District of Washington within a short period of time, it seems logical to assume that a great number must arise in the Western District of this state, and in other large districts where the state statutory requirements are similar to those of Washington. In the event of appeal, any opinion that I might write, even if affirmance resulted, would be of very little authoritative value.

“Two of the questions involved here, I shall state by quoting from the certificate by the referee in the case of *In re Simmons*—No. B-2759, as follows:

“1. Where a bankrupt, prior to bankruptcy, purchased certain household equipment under conditional sale contracts which were never recorded as provided by State Statute and, in his bankruptcy Schedules the bankrupt claims the equipment as exempt, may the Trustee in Bankruptcy take over from the conditional sale vendor and preserve for the bankrupt estate the vendor’s interest in the unrecorded contracts?”

“2. Under the same facts as above, may the conditional sale vendor compel the Trustee to set aside the bankrupt’s claimed exemptions before the Trustee proceeds to take over and preserve the unrecorded conditional sale liens of the vendor?”

“As to question one, I shall sustain and affirm the holding of the referee to the effect that, the trustee succeeds to, and takes over, for the benefit

of the bankrupt estate, all of the right, title, and interest of a vendor under an unrecorded conditional sale. It follows, I think, that the trustee may, and should, take appropriate action to preserve the security and enforce the claim not only against the vendor but also against the bankrupt. All that the bankrupt gets on his claim of exemption is whatever value or interest there may be in the property over and above the unpaid balance of purchase price at the time of adjudication. In other words, I think the exemption of the bankrupt covers only what is commonly called 'the equity' in the property. He is not, as has been argued in the briefs, required to buy his exemptions, or to contribute after-acquired funds to the bankruptcy estate. If he considers the property of less value than the conditional sales claim against it, he need not make any payment at all, and the property will be taken over by the trustee. If he considers that he has a substantial interest or equity over and above the balance of the purchase price, then [57] he may pay and discharge the claim. His situation is comparable to what it would have been if the conditional sales contract had met all of the requirements of the applicable state statutes. His exemptions would be subject to the claim on the property of the conditional sales vendor.

“As to question number two, it may be, as held by the referee, that the conditional sales vendor is not in a position to compel the trustee to set aside the bankrupt's claimed exemptions. However, for

the sake of orderly and proper administration of bankrupt estates, over which I think I have general supervision, it is my view that where, in the circumstances of these cases, the bankrupt has claimed as exempt, either specifically or generally, the property covered by the unrecorded conditional sales contract, the trustee should perform his statutory duty, and should set apart the bankrupt's claimed exemptions, and report the items and estimated value thereof to the court, as directed by the bankruptcy act. Where the trustee has failed to perform his statutory duties in this regard, however, I think any sanctions imposed should be directed against the trustee rather than against the rights of the creditors of the estate. And, as indicated above, where the trustee acts as to exemptions in accordance with the provisions of the bankruptcy act, he should set apart to the bankrupt as exempt only the 'equity' in the property covered by the conditional sales contract; and, if the unpaid balance of the purchase price at the time of adjudication equals or exceeds the value of the property, there would be no value placed upon the exemption set apart. Otherwise, the value of the exemption would be the value of the property over and above the amount of unpaid balance under the conditional sales contract at the time of adjudication.

“Moreover, I think there is a very practical reason here for requiring the trustee to take statutory action with reference to claimed exemptions. In *Sears, Roebuck & Co. v. McAllister*, 184 F.2d 487,

the Ninth Circuit Court of Appeals declined to decide the principal question presented on appeal for the reason that the record did not show that the specific property involved, or any of it, had been set aside to the bankrupt, or was, in fact, exempt, and therefore the appellant conditional sales contract vendor had no ground for complaint. It seems to me that in each of the current cases the trustee's action as to exemptions should establish a posture for decision on the merits on appeal of the basic questions involved.

“There seems to be another question here — at least in one or more of the cases; namely, whether the conditional sales contract vendor should be required to pay over to the trustee payments made on [58] the contract by the bankrupt subsequent to adjudication. I do not believe that the vendor can be required to make such payment.

“My decision, and the reasons on which it is based, as stated above, apply with equal force to cases involving chattel mortgages which fail to meet the requirements of the Washington state statutes.

“If I have overlooked any question which should be decided in these cases, I trust you will bring it to my attention.

“I suggest that orders be drafted by the trustees in accordance with the views expressed herein. If difficulty is encountered in the drafting of the orders, or in getting agreement of opposing counsel as to the form of the order, I shall be available in

Spokane for several weeks beginning January 3, 1958.

“Yours very truly,

SAM M. DRIVER

United States District Judge

SMD/b

cc—Clerk, U. S. District Court
Referee in Bankruptcy”

Judge Driver, while ruling on the basic question involved, concluded that the trustee's report of exempt property in the cases was not made as required by the statute and remanded the cases with instructions to the referee that he should make or cause to be made a more detailed and adequate record as to the items of property claimed as exempt and thereafter appropriate findings, conclusions and order based thereon. The order in the case now before the court was as follows:

“It Is Now, Therefore, Ordered that this matter be remanded to the referee, who is hereby instructed to make or cause to be made a list of the items of property and the estimated values thereof claimed as exempt by the bankrupts, to set off such exemptions, or cause them to be set off, if such has not heretofore properly been done, and specifically to find whether the property covered by the above referred to conditional sales contracts constitute a part thereof; that the referee give notice of his proposed findings and conclusions as

aforsaid [59] to the attorneys for the trustee, the bankrupt, and Sears, Roebuck and Company, giving them an opportunity to be heard and object thereto. After the determination of the exempt property, the referee shall reconsider the order hereinabove mentioned involved in this review proceeding, making such changes therein as he deems appropriate as a result of the findings made and conclusions reached pertaining to the exempt property, and that such order as the referee may then make, or cause to be made, shall be subject to review in the same manner as any other order entered by the referee."

Thereafter a trustee's amended report of exempt property was made itemizing the household furnishings allowed as exempt, setting forth the estimated value of each item. With respect to the refrigerator an "equity" of \$50 was reported with value of \$200, and as to the sewing machine, an "equity" of \$35 with value—\$116.72. As to the last two items the following note appears on the report:

"These two items, at the time the petition was filed, were being purchased from Sears Roebuck & Co. under conditional sales contracts, the lien of which the trustee reserves the right to preserve for the benefit of the bankrupt estate."

The total estimated value appearing on the report is \$320. This is obviously in error, the correct total being \$307.50 if the equity values are included and \$539.72 if the equity values of the refrigerator and

sewing machine are excluded and the estimated value of the items used.

Following the filing of the amended report the referee, after a hearing at which Sears, Roebuck & Co. were represented by their attorneys, entered supplemental findings of fact, conclusion of law and order wherein after finding that the refrigerator and sewing machine, pursuant to the trustee's report on exemptions, had been set aside to the bankrupts to the extent of the excess in value over the unpaid balance due thereon, and that a signed memorandum of [60] conditional sale had not been filed as required by the statutes of the state of Washington, held as before that Sears, Roebuck & Co. had no right, title and interest in or to the refrigerator and sewing machine, that the sales were absolute as to the rights of the trustee, and that the rights of Sears, Roebuck & Co. should be preserved for the benefit of the bankrupt estate.

It thus appears that the same basic questions now before me for review were before Judge Driver in the earlier review and an examination of his letter-opinion makes it clear that Judge Driver sustained and affirmed the referee on the issues here presented. Further, it is reasonable to assume from a reading of the latter portion of the letter-opinion that the motivating purpose of Judge Driver in remanding the case to the referee was to correct and remedy a defective record with respect to the trustee's report on exemptions so as to permit an appellate review of his decision on the basic ques-

tion on the merits. Under the doctrine of "law of the case" a judge of coordinate jurisdiction should not overrule decisions of his associate based on the same set of facts, unless required by higher authority or unless it can be authoritatively concluded that the earlier decision was clearly erroneous. *Standard Sewing Mach. Co. v. Leslie* (7 Cir.) 118 Fed. 557; *Luminous Unit Co. v. Freeman-Sweet Co.* (7 Cir.) 3 F. 2d 577; *United States v. Firman* (W.D. Pa.) 98 F. Supp. 944; *United States vs. Gas & Oil Development Co.* (W.D. Wash.) 126 F. Supp. 840. I am not persuaded that Judge Driver's opinion is clearly erroneous and therefore it is incumbent upon me to affirm the order of the referee upon this review without going into the merits of the case. In so doing I believe it proper for me to state that in a memorandum opinion recently written by me in deciding a bankruptcy review [61] in the Western District of Washington, namely, *In the Matter of Maynard Chris Espelund, etc., Bankrupt*, No. 44906, I held invalid an order of the referee purporting to preserve for the benefit of the estate the lien of a chattel mortgage on property found to be exempt to the bankrupt and subrogating the trustee to the rights of the mortgagee. It may be that the reasoning in that opinion appears inconsistent with my decision in affirming the order of the referee herein. However, as already stated, my action here is based on the doctrine that the law of the case has already been established by a prior ruling of a judge of this court, not con-

trary to any higher authority and not clearly erroneous and should not be disturbed by me. The decision I made in the Espelund case I am informed is about to be appealed and may be reversed. I have been unable to find and I do not believe there are any appellate court decisions construing Section 70(e) of the Bankruptcy Act as applied in this and the Espelund case. Therefore, I cannot properly conclude that an interpretation contrary to my own views is clearly erroneous until the Court of Appeals for the Ninth Circuit or the Supreme Court of the United States decides the issue.

Further, while Judge Driver's letter-opinion states:

"My decision, and the reasons on which it is based, as stated above, apply with equal force to cases involving chattel mortgages which fail to meet the requirements of the Washington state statutes."

the particular case before me does not involve a chattel mortgage, but a conditional sales contract. It should be noted that the exemption laws of the State of Washington, R.C.W. 6.16.020, provide, in part: [62]

"* * * no property shall be exempt from an execution issued upon a judgment for the price thereof, or any part of the price thereof, * * *."

and Judge Neterer in the case of *In re Phillips* (W.D. of Wash.) 209 Fed. 490, held a debtor cannot claim an exemption as against an obligation

representing the purchase of the property claimed exempt.

The specific issue not being before me because of the basis of my decision I make no decision as to whether a bankrupt chattel mortgagee or mortgagor is in a different or more secure position when a claim of exemption is made on mortgaged personal property than a conditional sales vendee or vendor when a claim of exemption is made on personal property in the vendee's possession under conditional sales contract.

Having fully considered the matter and for the reasons and upon the grounds hereinabove set forth,

It Is Ordered that the supplemental order of the referee entered in these proceedings under date of May 13, 1958 be and the same is hereby affirmed.

Dated: August 21, 1959.

/s/ WILLIAM J. LINDBERG,
United States District Judge.

[Endorsed]: Filed August 21, 1959.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Sears, Roebuck and Company, petitioner and appellant, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order of the Honorable William J. Lindberg, entered August 21st, 1959, and from each and every part thereof.

Dated September 18, 1959.

/s/ JOHN HUNEKE,
 PAINE, LOWE, COFFIN AND
 HERMAN,
 WHEELER, McCUE & MORRIS,
 Attorneys for Sears, Roebuck and
 Company. [64]

[Endorsed]: Filed September 18, 1959.

[Title of District Court and Cause.]

UNDERTAKING FOR COSTS
 ON APPEAL

Whereas, Sears, Roebuck and Company, a Corporation is about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit of the United States of America, from an order made and entered in the District Court of the United States, Eastern District of Washington, Northern Division, on the 21st day of August, 1959, affirming the order of the Referee.

Now, Therefore, in consideration of the premises, and of such appeal, the undersigned, Anchor Casualty Company, a corporation duly organized and doing business under and by virtue of the laws of the State of Minnesota and duly licenced for the purpose of making, guaranteeing or becoming a surety upon bonds or undertakings required or authorized by the laws of the state of Washington, does hereby undertake and promise on the part of

Sears, Roebuck and Company, a Corporation, that the said Sears, Roebuck and Company, a Corporation will pay all costs which may be awarded against them on the appeal, or on a dismissal thereof not exceeding the sum of Two Hundred Fifty and No/One Hundredths (\$250.00) Dollars.

Signed, Sealed, and Dated This 16th day of September, 1959.

[Seal] ANCHOR CASUALTY COMPANY,
/s/ By W. A. KEYWORTH,
Attorney-in-Fact. [66]

Acknowledgment of Surety Attached. [65]

Certified Copy of Power of Attorney Attached.

[Endorsed]: Filed September 18, 1959.

[Title of District Court and Cause.]

APPELLANT'S STATEMENT OF POINTS

The points on which Sears, Roebuck and Company, as Appellant, will rely on the appeal are,

(1) The District Court erred in affirming the order of the referee in bankruptcy, declaring the unfiled conditional sales contracts covering the sale of a Coldspot refrigerator and a Kenmore sewing machine by Sears, Roebuck and Company to the bankrupts were absolute sales, when such items of

personal property were claimed as exempt by the bankrupts.

(2) The District Court erred in affirming the order of the referee in bankruptcy that Sears, Roebuck and Company, Petitioners, had no further right, title, or interest, in the Coldspot refrigerator and Kenmore sewing machine purchased by the bankrupts under unfiled conditional sales contracts and claimed as exempt by the bankrupts.

(3) The District Court erred in affirming the order of the referee in bankruptcy that, as to the Coldspot refrigerator and Kenmore sewing machine purchased from Sears, Roebuck and Company under unfiled conditional sales contracts and claimed as exempt by the bankrupts, the interest of Sears, Roebuck and Company could be preserved by the Trustee for the benefit of the bankrupts' estate, and the two items could be retained by the bankrupts on condition that the balance of the sales contracts [68] of Two Hundred and Thirty-One Dollars and Seventy-Two Cents (\$231.72) be paid by the bankrupts into the bankrupts' estate.

/s/ JOHN HUNEKE,

Attorney for Sears, Roebuck
and Co., Petitioners.

Acknowledgment of Service Attached. [69]

[Endorsed]: Filed October 20, 1959.

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD AND DOCKETING APPEAL

On application of the Petitioner, Sears, Roebuck and Company ex parte, the court being fully advised, it is ordered that the time for filing the record on appeal with the United States Court of Appeals for the Ninth Circuit, and for docketing therein the appeal taken by Petitioner by notice of appeal filed September 18th, 1959, is extended to December 15, 1959, pursuant to Rule 73(g) of the Federal Rules of Civil Procedure.

Dated October 20th, 1959

/s/ CHARLES L. POWELL,
United States District Judge.

Notice of Mailing Attached. [70]

[Endorsed]: Filed October 20, 1959.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Eastern District of Washington—ss.

I, B. W. Blake, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the documents annexed

hereto are the original documents filed in the above-entitled cause, to wit:

Date Filed

- 2/21/57—Debtor's Petition.
- 2/25/57—Adjudication of Bankruptcy.
- 3/15/57—Petition to Declare Contract of Conditional Sale to be Absolute Sale.
- 3/25/57—Order Declaring Conditional Sale Contract of Sears, Roebuck and Company to be Absolute Sale.
- 4/19/57—Petition to Re-Open Show Cause Proceedings.
- 4/23/57—Order to Show Cause.
- 5/16/57—Answer to Petition to Declare Contract of Conditional Sale to be Absolute Sale.
- 5/16/57—Trustee's Report of Exempt Property.
- 5/27/57—Objections to Trustee's Report of Exempt Property.
- 5/27/57—Order Approving Trustee's Report of Exemptions.
- 5/27/57—Petition for Review.
- 10/16/57—Order Affirming Order Declaring Conditional Sale Contract of Sears, Roebuck and Company Absolute Sale.
- 16/16/57—Certificate by Referee to Judge.
- 10/29/57—Memorandum of Points and Authorities for Sears, Roebuck and Company.
Copy letter from Judge Driver dated 12/10/57.

Date Filed

- 2/28/58—Order on Petition for Review.
5/12/58—Order Approving Trustee's Amended Report of Exemptions.
3/30/59—Certificate of Referee to Judge (with attachments).
8/21/59—Memorandum Decision and Order.
9/18/59—Notice of Appeal.
9/18/59—Bond—Undertaking for Costs on Appeal.
10/20/59—Appellant's Statement of Points.
10/20/59—Order Extending Time for Filing Record and Docketing Appeal.
12/ 9/59—Appellant's Amended Designation of Record on Appeal.

and that the same constitute the record for hearing of the appeal from the Memorandum Decision and Order of the United States District Court for the Eastern District of Washington, in the United States Court of Appeals for the Ninth Circuit, as called for in Appellant's Amended Designation of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Spokane in said District this 11th day of December, A.D. 1959.

[Seal]

B. W. BLAKE,
Clerk.

[Title of District Court and Cause.]

ORDER DESIGNATING ATTORNEY TO
SERVE FOR TRUSTEE

At Spokane, in said District, December 11, 1959.

It appearing to the Court that Sidney Schulein, trustee in bankruptcy in the above matter, has been wholly incapacitated since the 16 of September, 1959, by virtue of poliomyelitis, and that an appeal has been taken from an order entered herein to the Circuit Court of Appeals; it is

Ordered that Thomas Malott be and he is hereby designated as the attorney for the trustee on said appeal.

/s/ MICHAEL J. KERLEY,
Referee in Bankruptcy.

State of Washington,
County of Spokane—ss.

Thomas Malott, being first duly sworn, on his oath states:

That I am the attorney designated to serve as counsel for the trustee in the above proceeding; that I represent no interests adverse to those of the bankrupt estate and that I represent no persons having claims against the bankrupt estate; that I know of no reason why I should not serve as attorney for the trustee herein.

/s/ THOS. MALOTT.

Subscribed and sworn to before me this 11th day of December, 1959.

[Seal] /s/ GRAYCE M. NEWMAN,
Notary Public in and for the State of Washington,
residing at Spokane. [73]

[Endorsed]: Filed December 11, 1959.

[Title of District Court and Cause.]

SUPPLEMENTAL CERTIFICATE
OF CLERK

United States of America,
Eastern District of Washington—ss.

I, B. W. Blake, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the document annexed hereto is the original document filed in the above-entitled cause on December 16, 1959, and submit it for consideration of the Court with the remainder of the record on appeal in this matter which was forwarded on the 11th day of December, 1959:

Title of Document

Order Designating Attorney to Serve for Trustee.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Spokane in said District, this 16th day of December, 1959.

[Seal] /s/ B. W. BLAKE,
Clerk.

[Endorsed]: No. 16719. United States Court of Appeals for the Ninth Circuit. Sears, Roebuck & Company, a corporation, Appellant, vs. Sidney Schulein, Trustee in Bankruptcy of the Estate of Charles Robert Baldwin and Betty June Baldwin, bankrupts, Appellee. Transcript of Record. Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Filed: December 12, 1959.

Docketed: December 24, 1959.

Supplemental Filed December 18, 1959.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
For The Ninth Circuit

No. 16719

SEARS, ROEBUCK & COMPANY,

Appellant,

vs.

SIDNEY SCHULEIN, Trustee,

Respondent.

STATEMENT OF POINTS AND AUTHORITIES
AND DESIGNATION OF RECORD
BY APPELLANT

Comes now Sears, Roebuck & Company, Appellant in the above-entitled action, and for its Statement of Points and Designation of Record adopts the Appellant's Statement of Points appearing in the typed record and also Appellant's amended Designation of Record on Appeal appearing in the typed record.

/s/ JOHN HUNEKE,

Attorney for Appellant.

[Endorsed]: Filed December 24, 1959. Paul P. O'Brien, Clerk.

